

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

DON RICHARD POLLOCK

PLAINTIFF

v.

Civil No. 6:15-cv-06066

WENDY KELLY; and
MICHAEL LITTLETON

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed January 19, 2017, by the Honorable Barry A. Bryant, United States Magistrate Judge for the Western District of Arkansas. (ECF No. 28). Plaintiff filed a *pro se* action pursuant to 42 U.S.C. § 1983 on July 2, 2016, alleging that his constitutional rights were violated because Defendants failed to protect him from attack by a fellow inmate. (ECF No. 1).

Defendants filed a summary judgment motion on July 28, 2016. (ECF No. 20). Defendants argue they are entitled to summary judgment because (1) Plaintiff failed to exhaust his administrative remedies prior to filing suit; (2) Plaintiff failed to state a constitutional claim against them; (3) Defendants are entitled to qualified immunity on the individual capacity claims; and (4) Defendants are entitled to sovereign immunity on the official capacity claims. Judge Bryant recommends that Defendants' summary judgment motion should be granted because Plaintiff failed to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997(e)(a). In light of the foregoing, Judge Bryant did not address Defendants' other arguments in favor of summary judgment.

No party has filed objections to the Report and Recommendation, and the time to object has passed. *See* 28 U.S.C. § 636(b)(1). Upon review, the Court adopts the Report and Recommendation *in toto*. Accordingly, the Court finds that Defendants' summary judgment

motion (ECF No. 20) should be and hereby is **GRANTED**. Plaintiff's action is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 13th day of February, 2017.

/s/ Susan O. Hickey
Susan O. Hickey
United States District Judge